IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2388 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SURESHBHAI PRAHLADBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2388 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2002

ORAL JUDGEMENT

Heard learned counsel Ms. DR Kachhavah for the petitioner.

The affidavit in reply filed by Mr. PC Pande,

Commissioner of Police for the city of Ahmedabad, tendered by Ld. AGP Mr. Kogje is taken on record.

The petitioner has challenged the order of detention dated 10.1.2002 Annexure-A alleging that the order of detention passed by the Police Commissioner, Ahmedabad City is bad in law and, therefore, the same should be quashed and set aside on the grounds mentioned in the memo of petition.

Ms. Kachhavah has mainly argued that according to the detaining authority the petitioner was found involved in the offence punishable under the Suppression of Immoral Traffic Act, 1985 but no other offence under the State Act or any other Act has been registered prior to the offence referred by the detaining authority in the grounds of detention. At present the detenu is in custody and he has not been offered bail. According to Ms. Kachhavah, the petitioner has not even applied for bail. It is submitted by Ms. Kachhavah that on the ground of parity, the order detaining the petitioner under PASA should be quashed as this court has quashed the detention order passed against other accused of the same crime. The order of detention passed against accused no. 4 has been quashed and set aside by this court vide decision dated 6.5.2002 while dealing with Special Civil Application No. 1256 of 2002. The computer copy of the decision has been tendered by Ms. Kachhavah and the same is taken on record.

After making certain submissions, in response of the query raised by the court, Mr.AY Kogje learned AGP has fairly submitted that he has verified that one of the similarly situated accused person has been released by this Court and the order of detention passed against him has been quashed.

Considering the ratio of the decision in the case of Anil Dey vs. State of West Bengal, reported in 1974(4) SCC p. 514 and the recent decision of the Apex Court reported in AIR 2002 SCW p. 1322, the order against the present petitioner shall have to be quashed as it would be difficult to accept that the petitioner is a dangerous person can be detained under PASA on the alleged solitary wrong.

Today, this Court has quashed the order of detention in the case of accused no. 2 of the offence while dealing with the Special Civil Application No. 2067 of 2002. So two decisions in favour of two different accused are there.

In the result, this petition is allowed. The impugned order of detention dated 10.1.2002 is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)

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